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Utilities manual

STATE OF MONTANA
DEPARTMENT OF HIGHWAYS

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UTILITIES MANUAL

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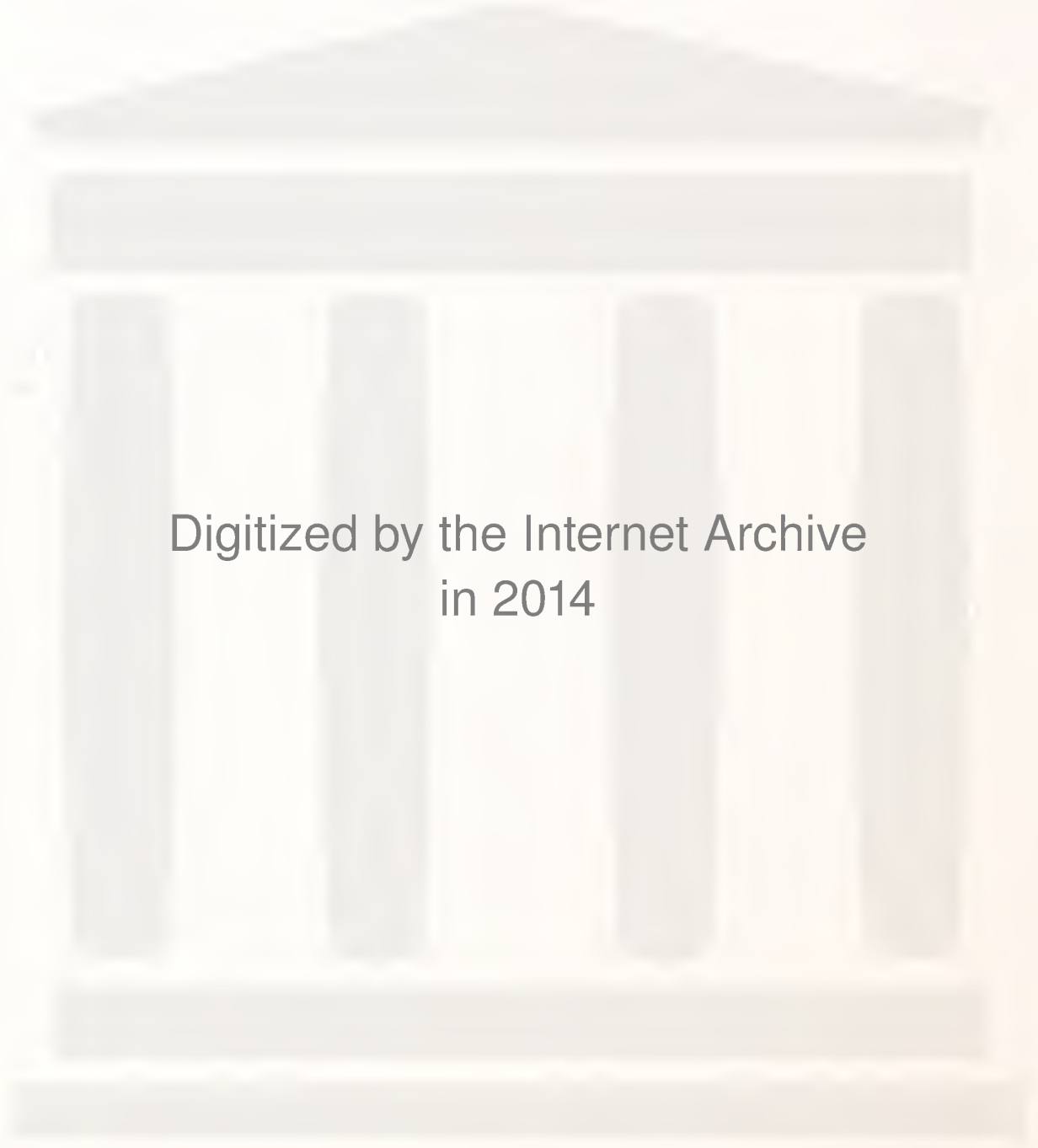
PREFACE

Highway design standards have changed greatly since the advent of the horseless carriage. Similarly, utilities have made great progress since the day of the manual post auger. State Highway Officials and the Federal Highway Administration have adopted controlled access standards on our interstate system that have far-reaching effects on utility companies. Also, due to traffic, maintenance, snow removal and other highway responsibilities, state and county highways have required an ever increasing width of right of way greatly exceeding the standard 66-foot width that was originally set aside by our government for highway purposes. The widely varying construction limits of these newer highways create many and varied problems for utility companies and for the state.

This manual has been prepared to establish a clearer understanding of those policies and procedures by which utilities and highways may serve their users and progress together. Its purpose is not to dictate policy and procedure, but to delineate those policies and procedures now in use.

We hope, with the aid of further experience gained by working together, that the utilities and the state will be able to improve this manual and simplify their methods to better serve the people of this great state.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1. INTRODUCTION

1.1. General Duties of Utilities Section

A. The Utilities Section is a part of the Right of Way Bureau since it is in that section that the initial utility inspection and notification to the utility companies can best be expedited and early determination made of which utility conflicts will have to be eliminted or adjusted. At the same time as the right of way acquisition is started, utility negotiations can be initiated. This gives the utility companies a period of time in which to determine the supplies and work force which will have to be available to complete the necessary work. Since utility companies do not carry many items such as cable, poles, casing, etc. in their permanent inventories in sufficient quantities to take care of other than their own needs, it is necessary that these be ordered as early as possible because delivery dates may vary from three to six months after the initial order has been placed.

B. It is the duty of the Utilities Section to see that the utility companies are alerted to new construction, supply them with preliminary plans, make inspections, form agreements, assist with estimates and generally act as a liaison officer between the Department of Highways and the utility companies.

It is also essential that utility companies keep the Utilities Section informed of all planned new facilities and facility expansion, so this information can be used in highway planning. Utility companies will be encouraged to participate in field reviews with the personnel of the Highway Design Section and Utilities Section.

1.2. Purpose of This Manual

1.2.1 To provide a clear statement of the Utilities Section Policy concerning the regulation of location, design, installation and adjustment of utility facilities within highway rights of way.

1.2.2 To help utility companies and others concerned to comply with State and Federal regulations, while suffering a minimum of interference to their normal business activity.

1.2.3 To outline clearly and in detail the actual procedures used by the Utilities Section in the discharge of its duties.

1.2.4 To help personnel of the Utilities Section in the course of their duties by providing necessary information in a single, compact and understandable volume.

1.2.5 Closely related subjects such as right of way, legal interpretations, surveys, plans and construction will, of necessity, be touched upon in this manual, but will not be covered in detail for obvious reasons. Manuals prepared by other sections of the Department of Highways may be obtained by those wishing detailed information not covered herein.

1.3. Policy and Law

1.3.1 Intent of Policy

This policy is established to regulate the location, design methods of installation and methods of adjustment of utilities on all highways under the jurisdiction of the Department of Highways.

1.3.2 The current Regulations Governing Occupancy of State Highway System Right of Way by Utility Facilities are, by this reference, made a part of this manual. These regulations are incorporated as part of the Administrative Rules of Montana, Rules 18.7.20N thru 18.7.241.

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2. UTILITY SECTION FUNCTIONS

2.1 Pre Agreement Development

2.1.1 Highway projects are programmed initially in the preliminary engineering stage, through design, right of way acquisition, incidental construction (utility adjustments) and construction. The average time span for all stages is 3 to 5 years. The growth of the county, the related growth of utilities, and the impetus of the Interstate Highway Program make it evident that early contact with the utility companies should be made to avoid delays in construction caused by late utility adjustments. The utility adjustments and relocations should, ideally, be completed before bids are obtained on the construction contract. Only those adjustments which have to be coordinated with the contractor should remain.

2.1.2 Prior to presenting a particular project to the Federal Highway Administration for program approval, the Utilities will, upon request by the Plans and Program Unit, furnish an estimate of cost of the necessary utility relocations and adjustments.

2.1.3 The Utilities Section will participate in map reviews of planned projects to assist the Preconstruction Section in making determinations that are deemed necessary to advance the project and to help establish the simplest and most economical method of adjustment or relocation.

2.2 Utility Agreement Development

When the project design has advanced to where utility plans can be sent to the utility so the actual relocation and adjustment of utility facilities can be determined, the following steps are taken:

2.2.1 Submit plans to the utility companies. The companies are to receive utility plans in accordance with article 2.6.1. These sets of plans are to be used on the field inspection. The Utilities will review the plans and notify the utility company of the date they will be making the inspection so the company can plan to have its representative meet a representative of the Utilities for the inspection.

2.2.2 A "plan-in-hand" field review is made by representatives of the utility company, the Utilities and the District representative to establish the most satisfactory and economical method of adjustment. The review is made, not only to establish changes in the proposed utility relocation, but also to see if minor changes in road design will result in a more economical method of adjustment, offer more protection to the traveling public, and provide a more satisfactory method of maintaining utility facilities. The utilities on

the plans should be checked against the actual facilities on the ground to make sure that all topography is correct. Location inside or outside of the existing right of way should be carefully checked at this time and if the existing right of way lines are not physically evident, a request to the District Engineer by the Utilities should be made to have them reestablished in order that a true picture of the facility in relation to the right of way may be obtained. A check of the utility encroachment permits in the Helena Headquarter's file and Division's file will be helpful in determining which utilities are on State right of way. There are cases, however, where utilities are on State right of way and are not aware of the fact and have never made application for an encroachment permit. It is often necessary to prove to the utility companies that they are encroaching.

The relationship of the utility to the right of way lines is important since the State will pay 100% of the cost of the utility move when the utility company has a prior valid property right, easement or other instrument. In many cases, the utility is both on private right of way and State right of way. In this event, the cost to the State is developed on a proportionate share basis in the same ratio as the number of poles to be moved on private right of way is to the total number of poles to be moved on both private and State right of way. Pipeline and buried cable costs to the State are developed in the same manner, but on a footage basis. In instances where utilities are located on State right of way by virtue of a statutory right, the State will pay 75% of the cost to adjust the facilities in conflict. Where the problem is complicated by the necessity of adjusting several utilities and/or extensive adjustments, the utility companies are asked for as many alternate plans and estimates as are deemed necessary for review by the Utilities Section. The review is held to establish the most economical method of adjustment, ease of maintenance, maximum protection to the traveling public, to avoid unsightly facilities along or over highways and to avoid unnecessary cost and difficulty of maintenance to the highway.

2.2.3 When all concur, the utility company is asked to make a formal and complete estimate, with detailed plans, establishing the method and manner of adjustment. The estimate will be checked by the Utilities Section to see that the utility company has complied with the applicable sections of the Policy and Procedure Memorandum 30-4. The estimate will be checked against the plans to see that quantities agree. The proposed relocation facility will be checked with design plans to see that it will not cause any conflict with construction. On interstate projects, the proposed relocation will conform to the "AASHO Policy on The Accommodation of Utilities on Freeway Rights of Way".

2.2.4 Upon receipt of approved plans and estimates, the Utilities will prepare and present two original copies of the standard State-Utility agreement to the utility company for execution by proper officials. There are, generally, two types of utility agreements for reimbursement to the utility company. The first is used where cost to the State will be in excess of $25,000. This agreement is prepared on an audit basis and payment will be made only after the utility company's cost records have been examined and approved by the State's utility auditor. The second may be used where cost to the State will be less than $25,000. The company here makes a request to have the cost which is shown in the estimate considered as a firm contract price for performing the work. Payment will be made in full after authorization has been given that the work has been completed by the utility company. Prints of the plan sheets showing the existing and new facility will be included in each copy of the agreement. Prints are color coded showing the existing facilities and the work to be done to accomplish the proposed relocation.

2.2.5 Upon receipt of the signed agreement from the utility company, two copies of the utility agreement are then forwarded to the Audit Unit for review. Upon the return of the agreements, one copy is sent to the Right of Way Attorney for inspection as to form and execution. He also reviews the agreement and renders a legal opinion concerning rights of reimbursement for utility adjustments based upon his review of the property interest documents attached to the agreement. A letter of transmittal thereafter will accompany two original, signed copies and one photo copy of the agreement to the Federal Highway Administration. Two copies of the agreement shall be marked "State Copy" for later return to the State. The letter of Transmittal to the Federal Highway Administration will request approval of the agreements and authorization to proceed with the work.

2.2.6 The Utilities Section will, upon receipt of the two copies of the utility agreements marked "State Copy" showing Federal Highway Administration's approval and authorization, obtain the signature of the designated highway official then forward to the utility company one original and one facsimile copy of the fully executed agreement, together with a letter of transmittal.

The first original copy of the agreement is to be retained by the State. Three facsimile copies will be sent to the District Engineer of the Department of Highways and one facsimile copy of the agreement will be sent to the Audit Unit and Construction Bureau. The letter of authorization to the utility company or cooperative to proceed with the physical adjustments of the facilities comes from the District Engineer (Note: Contractor use by a utility must be supported

by being awarded in accordance with practices followed by the utility in the accomplishment of the utilities non-highway related work. Further details of this procedure are covered in Article 2.10.

2.2.7 When all utility relocation agreements have been completed, the District Engineer will prepare Joint Use Agreements (RW 131) or Common Use Agreements (RW 133) recognizing the utility company's previous property rights and continuing property rights to occupy the position it is in after relocation. Two (2) original copies of the agreement will usually be prepared unless the company has requested more than one copy. When the Common Use Agreement has been signed by the company, the District Engineer will send both originals to the Utilities for review and approval. One original copy will be sent to the utility company, one original copy will be sent to the Land and Records Section, and one facsimile copy will be sent to the office of the District Engineer and one facsimile copy will be sent to the Maintenance Division. The District Engineer will also process all "Notice of Utility Occupancy and Use of State Highway System Right of Way" agreements (RW 131). The utility company will not be allowed to begin physical construction of the new facility until approvals of all RW 131 and RW 133 have been obtained.

2.2.8 An Explanation of Utility Agreement Flow Chart Procedure through the Utilities Unit is further explained and shown in the Appendix under Article 1, Item A.

2.2.9 The Utilities will keep itself informed of any changes that might occur in the right of way or design of the roadway sections and alignment and immediately inform the companies if the changes appear to conflict with the proposed utility relocations.

2.2.10 Every attempt should be made to have all utility agreements to the District so the project can be cleared of utilities at least 6 weeks prior to project letting. There may be certain adjustments that have to be coordinated with project construction.

2.3 General Agreement Requirements

2.3.1 In utility adjustments, the first consideration must be that of establishing the eligibility for State reimbursement and Federal participation in all costs of the utility relocation.

If preliminary engineering is to be performed for the utility by a consultant, prior approval of a project program for incidental construction for the use of said service must be obtained from the State and Federal Highway Administration.

The cost incurred for replacement, relocation and/or adjustments will not be eligible for reimbursement until the utility agreement has been approved by the Federal Highway Administration, and the authority to proceed has been given by the State. In extreme emergency, permission may be given by the State with the Federal Highway Administration's concurrence prior to approval and execution of the utility relocation agreement, when necessary materials require early procurement, or are in short supply.

The Federal Highway Administration will establish the date of eligibility for work to begin, but, normally, agreement approval and cost participation will govern.

2.3.2 Federal Utility Reimbursement Regulations

The regulations which fix Federal cost participation relative to utility work are contained in Policy and Procedure Memorandums 30-4 and 30-4.1, which, by this reference, are made a part of this manual. These PPM's not only prescribe procedure, but also establish controls and general requirements in regard to eligibility, agreement preparation and handling, plan and estimate preparation, credit for expired service life, developing and recoding costs, betterment and salvage values, reimbursement, billing and other items. Since State reimbursement is limited to the amount eligible for Federal participation under these regulations, it is necessary for personnel of the State and the utility companies to familiarize themselves with these regulations. Prior approval of the Federal Highway Administration for prescribed phases of utility work is required. Unless these regulations are met, many otherwise eligible items may be declared ineligible for State and Federal participation. Particular attention is directed to the requirements regarding services of technical consultants, construction contracts and salvage materials.

2.4 Departmental Utility Design Policies

State design and placement policies applicable to utility installation are the responsibility of the Preconstruction Bureau, and District Construction Section. The "Regulations Governing Occupancy of State Highway System Right of Way by Utility Facilities" contains the State's design and placement policies as adopted by the Department of Highways. Each adjustment shall be reviewed under the State's requirements, but, if an existing or proposed installation will not fully conform to State policy, it may be considered, on an individual basis, for possible exception. If an exception is considered warranted, all pertinent information should be submitted to the Utilities Section for their recommendation. All irregular utility problems must be reviewed by the Federal Highway Administration's Division Engineer or his representative before final acceptance.

2.5 Preliminary Utility Negotiations

2.5.1 General: There should be a constant flow of information and a continuous exchange of ideas between the State and the utility company to provide a maximum lead time. The utility adjustments should be made (and those adjustments requiring coordination with highway construction should be provided for) at least 6 weeks prior to project letting. The goals for this phase are:

A. The adjustments shall be made in a way which will not delay the highway program.

B. Maximum safety will be given to the travelling public.

C. The adjustments shall be made in a manner which provides:

1. The most economy.
2. The least inconvenience.
3. The most protection to both the highway and the utility.

2.5.2 Determining Location of Utilities

The Preconstruction Section will furnish a set of utility maps, showing the location and types of the known utilities on each project, which will be presented to the utility companies. During the field inspection, the necessary additions or deletions will be made so the State will have an accurate map. (It is obviously impossible for the State to locate and map all underground facilities).

2.5.3 Determining Property Interests

The State's initial request for information from the utility companies will also request that they furnish the State a map or other descriptive documents of their property rights, including both occupied and unoccupied areas.

2.5.4 The utility companies should be provided with sufficient copies of Federal Highway Administration's Policy and Procedure Memorandum 30-4, as currently amended. The companies should become familiar with all the requirements relating to reimbursement for adjustments. It is imperative that the companies realize that practically all facets of adjustments and related work require prior approval of the Federal Highway Administration. The utility companies should be sure that preliminary engineering has been authorized.

2.5.5 Preliminary Engineering and Planning

After authorization to incur preliminary engineering, the utility may proceed with the plans for the required

adjustment. Since State cost participation is limited to the most economical method of adjustment, within the framework of good design requirements, the utility should determine the proper route and design of the proposed facility after a joint field inspection and after engineering consultation with the Utilities Section, the Preconstruction's representative and the Federal Highway Administration's representative. It is intended that all conflicts relating to economics, AASHO policies, design requirements and betterments be resolved at this stage of negotiation. It may be necessary for the utility to prepare alternate plans of adjustment in order to establish the most economical and suitable method of adjustment. When complex problems arise, job site studies should be arranged. Comprehensive engineering reviews should be accomplished at this stage, and detailed study should be made, with emphasis on coordination with the successful bidder on the highway contract, in order to avoid unnecessary delays. The moves should be sequenced to avoid delaying a major project.

2.5.6 Use of Consulting Engineers

Paragraph 5b of PPM 30-4 states, "Where a utility is not adequately staffed to prosecute the relocation, Federal funds may participate in the amounts paid to engineers, architects and others for required engineering and allied services, provided such amounts are not based on a percentage of the cost of relocation." This paragraph applies most frequently to those instances where a utility must engage a consulting engineering firm to perform engineering services, either all or part, for the preliminary, design and construction phases of an adjustment or relocation. Care should be taken to insure that no consultant charges are incurred prior to State and Federal Highway Administration approval. For detail procedure in obtaining consultant approval, see Article 2.9.

2.5.7 The utility will select the most economical route available for the adjustment. Necessary right of way will be purchased by the utility company, not the State. The cost of right of way is a reimbursement item. The cost should be established by good appraisal practice. Most utility companies will not resort to condemnation; therefore, in rare instances, the State may include the additional right of way necessary for utility adjustments in the State's condemnation action. All costs of right of way must be supported by adequate documentation by the utility company.

Prior to negotiation, the utility shall establish the value of the rights it will require, and this cost shall be incorporated in the utility agreement estimate. Appraisal for the establishment of right of way costs is a part of preliminary engineering, but actual purchase of right of way cannot be

accomplished until the utility agreement is approved by the Federal Highway Administration and authority has been granted by the State. Any purchase of right of way prior to the State's and the Federal Highway Administration's approval is ineligible for reimbursement.

2.5.8 Disposition of Existing Utility Facilities

Federal participation for utility work is governed by PPM 30-4, as currently amended. Paragraph 11 of PPM 30-4 provides that the utility company may receive reimbursement for removal cost subject to several conditions. This facet of utility relocation usually pertains to underground facilities; for example, it may be more economical to abandon an underground telephone cable or small diameter pipe in place, provided it does not interfere with highway construction, and will not later contribute to a road failure. The criterion for determining whether to abandon or remove a utility is weighing the cost of two categories: A. When existing facility is replaced, and B. When existing facility is not replaced.

A. Existing facility is replaced.

1. When the State determines that the existing facility cannot be allowed to remain in place, then the facility will be removed as per Paragraph 11g. If the utility company removes the facility, the cost will be reimbursable, and credit will be required for materials removed in accordance with Paragraph 11f(1).

2. When the State determines that the existing facility should not be removed, or will not have to be removed, no payment will be made to the utility, nor credit required from the utility. (A replacement facility is being installed; therefore, compensation is being made, and the utility is made whole).

B. Existing facility is not replaced.

When the existing facility or any portion thereof is not being replaced, the cost paid and the credits required for such existing facility are covered by PPM 30-4, Paragraph 11f(2). The following will govern for each condition:

1. When the State determines that the existing facility cannot be allowed to remain in place, then the facility shall be removed by the owner, except as covered under Paragraph 11g. The cost of removal will be reimbursable provided it meets with the

requirements of Paragraph 11f(2), but no other costs will be paid. (This is based on the fact that the facility is the property of the utility).

2. We rarely encounter the situation where the facility is not removed, and each case must be considered on its own merit. The property rights of the utility company must be considered.

2.5.9 Restoration of Service to Properties

A. The State's participation in the restoration of service to properties will be determined on the basis of whether the property was a whole take or a partial take. If the service was to a property that was taken in total, the State will participate in the cost of removal, in accordance with Paragraph 11f(2), and the State will not reimburse the utility company for any installation of new lines.

If there is a partial take of property within the proposed right of way, and there is an existing service to improvements on the property, the State will participate in the cost of providing new service, and the State will be given for salvage.

B. Where highway construction disrupts utility service to an improvement outside the service area, restoration of service is eligible for State participation.

2.6 Maps

The Utilities Section will arrange for the delivery of the following maps to each utility company involved.

2.6.1 Utility Maps and Other Related Material

A. Utility maps

The number of prints will depend on the number of utilities involved. In all cases, three prints will be needed for the District and two prints will be needed by the Utilities Section. The following is a list of the utilities most likely to be encountered and the number of prints to be added for each different utility involved:

The Montana Power Company	3 prints
Other private power companies	3 prints
Rural electric	2 prints
Gas	3 prints
Telephone	3 prints
Rural telephone	2 prints
Water	2 prints
Sewer	2 prints

B. Other Related Material

In addition to prints of the utility plans, it is necessary, to supply the Utilities Section with one print of road plans, cross sections, and typical sections. In the event that cross sections are not prepared for the project, the Utilities Section must be furnished with one set of I.B.M. cross section data.

2.7 Utility Plans Preparation

2.7.1 State Assistance to the Utility

Preparation of the plans delineating work to be accomplished is the responsibility of the utility company. The utility company's engineering staff must plan and design the proposed facility. The State, however, should render assistance by providing the utility company with highway design data (i.e. grades, profiles, structures, alignment, cross sections, etc.), as well as right of way information (such as right of way widths and control of access lines) and other standard requirements.

Emphasis should be placed on the coordination and free flow of information between the authorized representatives of the State and the utility company.

2.7.2 Plan Requirements

A. Procedure

Paragraph 7b of PPM 30-4 requires that the utility agreement be supported by a plan which will be sufficiently informative and complete to provide a clear and concise picture of the adjustments and removals to be made. Paragraphs 7h and 7i of PPM 30-4 require supporting plans or drawings for the utility relocation shall be sufficiently informative to provide a clear picture of the work to be done.

2.8 Preparation of Utility Cost Estimates

2.8.1 General Requirements

A. The cost estimate shall be prepared by the utility company, and submitted to the Highway Department in support of the work of the utility agreement and required plans.

B. The completed agreement shall include the agreement, plans and estimate, and should show or recite the portions of the adjustment necessitated by highway construction and those for which the utility is requesting reimbursement with proof of a valid existing prior property right. Where the adjustments are in segments, the estimate may be assembled so that the cost of each segment can be identified.

C. The agreement shall recite that total cost of adjustments, with major subtotals for the cost for those necessitated by highway construction, those eligible for reimbursement, and those to be done at the expense of the company.

D. All estimates will be prepared in conformance with PPM 30-4, as amended. Paragraph 7h of PPM 30-4 is quoted as follows: "The estimate in support of the agreement shall set forth the items of work to be performed, broken down as to estimated cost of labor, construction overhead, materials and supplies, handling charges, transportation and equipment, right of way, preliminary engineering and construction engineering, including an itemization of appropriate credits for salvage, betterments, and expired service life, all in sufficient detail to provide the State and the division engineer a reasonable basis for analysis. The factors that will be included in the utility's construction overhead account shall be set forth. Materials are to be itemized where they represent relatively major components or cost in the relocation. Unit costs, such as broad gauge units of property, may be used for estimating purposes where the utility uses such units in its own operations."

Paragraph 14b of PPM 30-4 states that the final billing will follow as closely as possible the order of items in the estimate portion of the agreement and the totals for labor, overhead, construction costs, travel expense, transportation, equipment, materials and supplies, handling costs, and other service shall be shown in such a manner as to permit comparison with the approved estimate.

E. A sample copy of a utility estimate which is acceptable to the Utilities Section has been included in the Utility Manual in the Appendix, Article 1, Item 1.

2.9 Approval of Consulting Engineers

The use of a consulting engineer by a utility company is acceptable as previously noted in Article 2.5.6. The method by which the utility company obtains the approval of the consultant by the State and Federal Highway Administration is as follows:

A. When it has been determined by the utility company that it is not adequately staffed to prosecute the utility relocation, the utility company may select a consulting engineer of its choice.

B. The consulting engineer who has been selected must, on the basis of the highway plans and utility company's knowledge of the work to be accomplished, prepare an engineering estimate. This estimate should indicate the consultant's total cost to accomplish the needs of the utility company. Engineering estimates are not acceptable if they are based on a percentage of the cost of relocation. A sample copy of an acceptable engineering estimate is attached to the manual in the Appendix, Article 1, Item H.

C. The utility company, after receiving the engineering estimate, forwards it to the Utilities Section, together with a letter of transmittal. Demonstration is needed that the utility company will not be adequately staffed or equipped to perform the work with its own forces at the time of the State's request for utility relocation.

D. The Utilities Section will process the utility company's letter and the engineering estimate for acceptance by the State and Federal Highway Administration. Three copies of the letter and estimate are compiled and forwarded to the Federal Highway Administration for review and approval. Two copies of the transmittal are stamped, "STATE COPY", for return to the State with Federal Highway Administration's approval.

E. Upon the return of the two Federal Highway Administration's approved "STATE COPIES" of the engineering estimate, the State forwards an original and one facsimile copy of the approved estimate to the utility company, together with a letter of transmittal. The letter of transmittal will authorize the utility company to begin using the consultant for engineering services. One original copy will be retained in the Utilities Section's file. One facsimile copy will be sent to the District and one facsimile copy to each of the Construction and Audit Unit. Consultant charges which are incurred prior to the date of the State's authorization for the use of the consultant are ineligible for reimbursement by the State.

F. It must be understood that the State's and Federal Highway Administration's approval of a consultant for the utility company is valid only for the initial project for which the engineering estimate was prepared. Individual approval of a consultant and engineering estimate must be obtained for each and every highway project.

2.10 Approval of Continuing Contractor

The use of a continuing contractor by a utility company is acceptable. Contractor use by a utility must be supported by being awarded in accordance with practices followed by the utility in the accomplishment of the utilities non-highway related work.

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3. RAILROAD SECTION FUNCTIONS

3.1 General

Negotiations with railroad companies are necessitated when highway construction is carried across the company's right of way or may encroach upon company right of way in any fashion. The difficulties encountered in these negotiations vary greatly and are not easily predetermined.

3.2 Federal Regulations

Generally, applicable Federal regulations are obtained in Federal-aid Highway Program Manual (FHPM) 1-4-3 and in FHPM 6-6-2-1. FHPM's 1-4-3 and 6-6-2-1 are hereby incorporated in and made a part of this manual by reference. The regulations which fix Federal cost participation relative to railroad work are obtained in FHPM 1-4-3. This FHPM not only prescribes procedures, but also establishes controls and general requirements in regard to eligibility, agreement preparation and handling, plans and estimates preparation, developing and recording costs, betterment and salvage values, reimbursement, billing and other items. Since State reimbursement is limited to the amount eligible for Federal participation under these regulations, it is necessary for personnel of the State and the railroad companies to familiarize themselves with these regulations.

Prior approval of the Federal Highway Administration for prescribed phases of railroad work is required. Unless these requirements are met, many otherwise eligible items may be declared ineligible for State and Federal participation.

3.3 Preliminary Railroad Negotiations

The first move made by the Utilities Section in such matters is that of informing the Railroad of any plan to cross or encroach upon their property. This notification frequently precedes preparation of even the preliminary plans and will often be nothing but a letter stating that there is thought being given to construction that will possibly involve the railroad. The Utilities Section has found such notice to be appreciated and final agreement much easier to achieve. At this point, it should be noted that the State gives notification to the company's main office, as well as the regional office involved.

3.4 Railroad Application Maps

The usual type of application to the railroad company will involve forwarding one set of marked up highway right of way drawings, showing in colors, the encroachments on railroad right of way, one set of plan and profile highway plans, and one set of highway cross sections in the vicinity of the railroad's encroachments. In the event that cross sections are not available, one set of the IBM cross section data is usually substituted.

For each railroad involved on a particular project, 5 sets of R/W Plans and 3 sets of cross sections and road plans will be needed. Prints of the road plans should include plan and profile sheets of the encroachment area, title sheet and typical sections.

The Utilities Section will receive the appropriate railroad application plans from the Preconstruction Bureau, together with a memorandum of "scope of involvement".

The above plans are to be used by the railroad company for the preparation of their estimates and exhibits, as well as for a plan-in-hand field review with their representatives and representatives of the Federal Highway Administration, Utilities Section and District Engineer. In addition to the railroad, application plans (one complete set) are furnished to the District Engineer by the Utilities Section.

3.5 Railroad Application Procedure

There are several types of agreements with railroad companies; very similar in the most part, but quite dissimilar in certain respects. The following are a few of the cases covered in company and state agreements:

Case #1 covers the widening of an existing at-grade crossing. If there is any existing or new signal placement at the existing at-grade crossing, a separate agreement is generally initiated and processed by the Utilities Section. This agreement must cover the removal of existing standard signals, if any, and if the new width will carry four lanes of travel, these signals must be replaced with cantilever arm signals. If the new width will still carry only two lanes of travel, the existing signals may be adjusted and perhaps be reconditioned. The cost of constructing the revised crossing (omitting signals) is reimbursable and this agreement is initiated and processed by the Utilities Section. The agreement or agreement exhibit should refer to the surfacing to be used in the crossing. There will be attached to this agreement, Exhibit "A" (maps and drawings), "B" (statement of conditions when flagmen, protective services and devices will be furnished by the railway), "C" (estimate of cost, omitting signals) and "D" (non-discrimination provisions). Mention of the easement, as needed in the State's widening project, may be made in the construction agreement as it is frequently handled, and generally paid for, separately. The easement agreement is also initiated and processed by the Utilities Section.

Case #2 is the case of a newly located at-grade crossing and the signal agreement, as initiated and processed by the Utilities Section, should cover the cost and need for flashing light signals if there will be a need, and, as in Case #1, cantilever arm signals provided if there will be four lanes of highway travel. The construction agreement, initiated and processed by the Utilities Section will cover the reimbursement for any company cost necessitated by such a new

crossing (omitting signals). In Case #1, mention of the necessary easement may be made in the construction agreement. The easement agreement is also initiated and processed by the Utilities Section.

Case #3 covers separation structures. The structure construction agreement, as initiated and processed by the Utilities Section, grants the State the right to construct a structure on railroad right of way and covers reimbursement for any cost to the company necessitated by construction of the structure. Mention of the easement, as needed for the structures and approaches, may be made in the construction agreement. The easement agreement is also initiated and processed by the Utilities Section.

Case #4 covers longitudinal right of way for roadway encroachments on railroad right of way. The cost to the State of railroad right of way is usually a negotiated matter and must be approved by the Appraisal Section of the Right of Way Bureau and the Chief - Right of Way Bureau. The Utilities Section handles payment of these costs and the Appraisal Section furnishes appraisal service. The Plans Section, when needed, assists in the preparation of legal descriptions used in the transfer of property. The easement agreement form used in right of way transactions will usually consist of plats and legal descriptons in the case of land acquisition.

In cases of gaining a construction permit for cut or fill slopes, the agreement may consist of only a letter attached to a layout showing the area of encroachment. In other cases, the railroad may require the usual form of easement agreement.

3.6 "Plan-in-Hand" Field Review

The Utilities Section will review the railroad application plans and notify the railroad company of the date they will be making the inspection so the company can plan to have their representative meet a representative of the Utilities Section for the inspection.

A "plan-in-hand" field review is made by representatives of the involved railroad, the Utilities Section and the District Engineer's representative to establish the most satisfactory and economical method of adjustment. The review is made not only to establish changes in the railroad facilities, but also to see if minor changes in road design will result in a more economical method of adjustment. The railroad facilities on the plans should be checked against the actual facility on the ground to make sure that all topography is cor-rect. Location inside or outside of the existing right of way should be carefully checked at this time and if the existing right of way lines are not physically evident, a request to the District Engineer by the Utilities Section should be made to have them re-established in order that a true picture of the facility in relation to the right of way may be obtained.

Generally, the State will pay 100% for the cost of constructing or adjusting railroad facilities when the railroad company has a prior valid property right, easement or other instrument. In cases where the railroad does not have a valid property right, easement or other instrument, the railroad will be advised by the Utilities Section or property owner to remove or adjust their facilities to accommodate the proposed highway construction at no cost to the State. In certain cases, the railroad shall share in costs. In this regard, all projects involving railroads must be reviewed against Paragraph 6 (Classification of Projects and Railroad Share Of the Cost) of FHPM 6-6-2-1 for applicability of provisions.

When the plans are acceptable to all concerned, the railroad company is then asked to make a formal and complete estimate, with detailed plans, establishing the method and manner of their adjustment. The estimate will be checked by the Utilities Section to see that the railroad has complied with the applicable sections of FHPM's 1-4-3 and 6-6-2-1.

3.7 Explanation of Flow Chart Procedure of Railroad Agreement, Easement and Estimate.

Explanation of flow chart procedure of railroad agreement, easement and estimate through the Utilities Section is further explained and shown in the Appendix under II.A.

1. The Utilities Section will keep itself informed of any changes that might occur in the right of way or design of the roadway sections and alignment and immediately inform the companies if the changes appear to involve the proposed railroad adjustments.

2. Every attempt should be made to have the project cleared of railroad involvement prior to project award, but there will always be certain adjustments that have to be coordinated with project construction.

3.8 Processing Railroad Agreements.

Generally, the preparation of all railroad agreements is taken care of by the involved railroad company. The agreements in duplicate are then forwarded by the Utilities Section for approval. Generally, the exhibits are prepared by the company.

Upon the State's receipt of the duplicate agreements, sufficient copies are made to allow distribution to the various sections of the Department of Highways for review and acceptance. This distribution is as follows:

Plans Section	State's original
Right of Way Attorney	1 copy
Preconstruction Bureau	1 copy
Bridge Bureau (if structure involved)	1 copy

Audit Unit	1 copy
Federal Highway Administration	1 copy

When acceptance and/or comments of the agreements are received from the above distribution, a determination has to be made as to whether or not to execute the agreements. If the comments are minor in nature, the Utilities Section secures the signature of the Chief - Right of Way Bureau. If the comments are such that a revision must be made to the agreement before it can be executed, it is then returned to the offices of the railroad company with a request for revision. If the revisions are not readily agreed to by the railroad company, the changes are then negotiated until an acceptable agreement can be returned to the State for signature.

After an acceptable agreement has been executed by the State, the duplicate copies are returned to the company for their execution and a usual request is made for the return of one of the original fully executed copies of the agreement.

Upon receipt of the signed agreement, it is distributed as follows:

Right of Way File	1 orig. (Const. Agree.) 1 orig. & 2 copies (Easement)
District Engineers	2 copies (Const. Agree.) 1 copy (Easement)
Construction Bureau	1 copy (Const. Agree.)
Accounting Bureau	1 copy (Const. Agree.)
Contract Plans Section	1 copy (Const. Agree.)

The District Engineer is advised at the time he receives his copies of the construction agreement that he may, when applicable, authorize the railroad company to proceed with their work.

After distribution of agreements, no further action is normally required by the Utilities Section.

EXPLANATION OF
FLOW CHART PROCEDURE OF
RAILROAD AGREEMENT, EASEMENT & ESTIMATE

1. Upon completion of a design, the Utilities Section is furnished railroad application plans by the Preconstruction Bureau. Sufficient plans are furnished to provide at least one set to each of the personnel of the railroad company which is involved with processing project for approval.

2. If incidental construction (IC) money is programmed and approved, the railroad company involved is furnished plans with a letter of transmittal arranging for a joint field inspection.

3. At a predetermined date, a joint field inspection is made with the representatives of the Utilities Section, the railroad involved, the Federal Highway Administration and the District Engineer to mutually review encroachments on railroad right of way and determine adjustments required to clear construction limits.

4. After determining approximate relocation costs either by actual field engineering or plant experience records, an estimate is submitted by each railroad company involved. Estimates are formulated according to the requirements of Federal Highway Administration's FHPM's 1-4-3 and 6-6-2-1. Estimates are then incorporated in construction agreement and easement prepared by the railroad company for each specific project.

5. A review is made of each agreement, easement and estimate as to arithmetic, participation costs and compliance with FHPM's 1-4-3 and 6-6-2-1 and State of Montana legal statutes. Any irregularities are made known to either the railroad company or to the Federal Highway Administration, or both, and corrections are made accordingly.

6. After the railroad agreement, easement and estimate are received, they are submitted to the Right of Way Attorney, Plans Section, Audit Unit, Preconstruction Bureau, Federal Highway Administration, and Bridge Bureau (if structure involved) for review and acceptance.

7. Upon the acceptance of all those who are involved in Step 6, the agreement, easement and estimate are then forwarded to the Chief - Right of Way Bureau for his execution.

8. After the agreement, easement and estimate are returned to the Utilities Section, they are forwarded to the railroad company for execution by railroad officials.

9. After the agreement and estimate are fully executed, and returned, copies are made to distribute; two to the District Engineer and one each to the Construction Bureau, Accounting Bureau and the Contract Plans Section. At this time, the Utilities Section advises the District Engineer, when applicable, to authorize the Railroad to proceed. Also, at this time, the Utilities Section advises the railroad to order materials. The original

agreement, easement and estimate are placed in the railroad file in the Utilities Section.

10. Those documents which necessitate recording and/or payment are further duplicated and forwarded to the Land & Records Section for this purpose. The completed railroad file is forwarded to the Land & Records Section for processing and microfilming.

RESPONSIBILITY AND PROCEDURE FOR PREPARING RAILROAD PLANS
FOR UTILITIES SECTION BY PRECONSTRUCTION BUREAU

The recent processing of State agreements and plan approval associated with State highway projects indicates the need to develop and set down in writing precisely who should take what action in handling of railroad involvements.

In accordance with this need, the following procedure is presented for your consideration and subsequent action necessary to make it operational.

II. Railroad Involvements

A. Railroad Field Notes It is the responsibility of the Preconstruction Bureau to obtain from the field the necessary field notes to prepare an accurate summary of railroad conflicts with highway construction; therefore, the railroad field notes showing existing railroad facilities should be as complete as possible. These notes are used in the preparation of suitable highway right of way plans for railroad application. The omission of any railroad information from the notes will result in the delay of processing future railroad agreements and the needless expenditure of highway funds. The receipt of any field notes that are not considered adequate to present a clear, concise and complete picture of the railroad situation for a given project should be returned to the appropriate District Engineer for further field investigation and survey work.

When construction for a project encroaches on railroad right of way, it is necessary to provide the information required in making an application for an easement or a permit. In some cases, an easement may have been obtained on an existing project. If this is found to be true, there should be copies of such a transaction in the files. All existing easements obtained by the State Highway should be drawn on and labeled on the plans. Easements should not extend closer than 50 feet to the track. Under certain extreme cases where we do not have any reasonable alternative other than to locate the construction of the highway closer than the 50 foot limit, the railroad may approve of closer easements. In such cases before R/W plans are prepared, contact should be made with the railroad through the Utilities Section, to gain approval of such design. Generally branch lines provide the best chance for deviation from the 50 foot policy. Permits are usually granted to within a reasonable distance of the tracks. Permits should only be used where the final constructed facility on such area will not have to be maintained by us in the future. When channel changes are to be made on railroad right of way, the cross sections should include all details such as width, depth, etc. In drawing the proposed easements and permits on the right of way maps, it is necessary that certain required procedures be followed in order to prepare an adequate application to the railroad company.

In cases where the highway centerline crosses the railroad centerline, it is necessary to show the railroad stationing and highway stationing at the point of crossing. The angle of intersection between the two centerlines should also be shown. Also both railroad and highway stationing should be shown at all locations where the highway R/W line intersects the railroad R/W. The road designer, even though he has a set of field notes, should coordinate them with the Bridge Bureau's bridge and grade crossing notes. In many instances, there are discrepancies in distances, stationing and angles between the two sets of notes. On a parallel encroachment, it is necessary to show distances to the right of way line from the highway centerline and railroad centerline. Equivalent stationing of highway and railroad must be shown at all right of way line breaks.

All railroad facilities should be labeled as to the company or private individual owning them. This information is available from the personnel of the various railroad companies. In some instances, private railroad facilities will be encountered. Similar information must be provided for these facilities in order to process their adjustment as a right of way item. There are times that a section of railroad facilities is either jointly owned or jointly used by several railroad companies. In these instances, all of the information available should be listed and the railroad company which has jurisdiction over the joint usage or jointly owned trackage must be shown.

B. Preconstruction Bureau Responsibility It is the responsibility of the road designer to see that the Utilities Section is furnished with accurate and complete railroad application plans. These plans must contain all of the information provided by the railroad field notes. Any omissions or misinformation recorded on the application plans will ultimately result in additional field railroad inspections and thus a delay in processing the railroad agreement and needless expenditures of highway funds. The designer will see that the railroad application plans conform with the latest road plans and cross sections and any changes in alignment, additions or revisions to the road plans must be reflected therein.

Before consummation of the final proposed agreement, a copy is sent for the designer's review. He should compare the agreement to the plans to make sure the agreement is correct and covers all requirements of the project. If discrepancies are spotted, the Utilities Section should be notified so appropriate changes in the agreement can be made. After the agreement is complete and executed, one copy is sent to Contract Plans. It is their responsibility to work with the Area Engineer and designer to make sure requirements of the Railway-Highway Agreement are covered as necessary in the design plans, contract provisions and contract special provisions.

C. Common Means of Processing Railroad Conflicts Railroad application plans are generally prepared from the right of way original plans. On these prints, all existing easements should be colored yellow; proposed easements, colored red; proposed permits, colored green; proposed

deeds, colored orange; PTW, colored brown. On interstate and limited access projects, it will also be necessary to draw a blue line to indicate control of access. One set of the above marked up right of way plans will be furnished to the Utilities Section. The remaining sets of right of way plans furnished to the Utilities Section may be unmarked. The application plans should not, ordinarily, be made and forwarded to the Utilities Section until after the final road plan-in-hand inspection has been made and appropriate changes made to the road plans, cross sections and right of way plans.

The road designer is to forward 5 sets of right of way plans and 3 sets of cross sections and road plans, together with a memorandum of "scope of involvement" to the Chief - Right of Way Bureau, attention Utilities Section, for their use in making railroad agreements. Prints of the road plans should include plan and profile sheets of the encroachment area, title sheet and typical sections.

(1) Railroad Relocation Contracts The receipt of the railroad application plans by the Utilities Section will allow them to arrange for a field inspection with representatives of the railroad company, district and headquarters' personnel. At the time of this inspection, the method of adjusting the conflicting railroad facilities and the acceptance of various permanent and temporary encroachments on railroad right of way will be generally determined.

In some instances, the railroad companies will request additional time to investigate the problems, in order to clear with their management and advise the Deparment of Highways of the best solu tion. In any event, the Utilities Section will advise the Right of Way Bureau regarding those facilities which must be handled as right of way items; also, the Preconstruction Bureau, regarding those facilities which must be handled as construction items. The usual railroad facilities will be handled as a part of the railroad agreements in accordance with FHPM's 1-4-3 and 6-6-2-1. As indicated above, copies of the railroad agreements, as they are concluded, will be on file in the Utilities Section for reference.

(2) Unusual Situations There will, undoubtedly, be instances where the designer will be in doubt as to how the adjustment of railroad facilities should be handled and how temporary and permanent encroach-ments should be made to the railroad companies. In these cases, the road designer should arrange to meet with a representative of the Utilities Section so that an agreeable procedure could be worked out and the necessary railroad application plans prepared. In the preliminary stages of the road design, it will often be advantageous to submit our plans to the railroad companies where extensive railroad encroachments or adjustments are involved. This procedure will enable the Department of Highways to coordinate its planning with the railroad companies and will, often times, save considerable work and money towards the development of final plans. Preliminary applications will be handled in the same manner as the usual railroad applications listed above.

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Explanation of Utility Agreement Flow Chart Procedure

1. Upon completion of a respective design, the Utilities Section is furnished utility plans by the Preconstruction Section. Sufficient plans are furnished to provide at least two sets to each utility company involved, including the Utilities Section.

2. The utilities involved are furnished plans with a letter of transmittal arranging for a joint field inspection.

3. At a predetermined date, a joint inspection is made with a representative of the Utilities Section, representatives of utility companies involved and a representative of the District to mutually determine adjustments required to clear construction limits.

4. After determining approximate relocation costs, either by actual field engineering or plant experience records, an estimate is submitted by each utility involved. Estimates are formulated according to the requirements of Federal Highway Administration's PPM 30-4.

5. A review is made of each estimate as to arithmetic, right of way status, participation costs and compliance with PPM 30-4. Any irregularities are made known to either the utility or to the Federal Highway Administration, or both, and corrections are made accordingly.

6. After the estimate is considered acceptable, a standard agreement form is prepared and submitted to the utility for signatures. Upon return to the Utilities Section: The agreement is then forwarded to the Highway Audit Unit for its approval after which it is forwarded to the Right of Way Attorney for his review and legal opinion of property rights and then:

7. When the agreement is returned to this office, ample copies are made to distribute; two to utility company; three to Division Construction Section; one to Construction Bureau; and one to Audit Unit. The original is placed in the files of the Utilities Section.

OFFICE PROCEDURE FOR INITIATING AND PROCESSING UTILITY AGREEMENTS

NOTE: Record all progressive steps of each utility agreement on utilities progress Form 28/L. Attach Form to and keep with the Estimate/Agreement at all times.

COST ESTIMATES

1. Check the company's cost estimate for accuracy in computations.

2. Check the map against cost estimate to determine if number of relocations has been accurately totaled. Make notation on map to indicate how many relocations are on private right of way and how many are on public right of way.

3. Stamp "EXHIBIT A" on cover letter accompanying the company's estimate.

4. Stamp last sheet of estimate with the Utilities Section's approval stamp and date stamp. Obtain the signature of the Utilities Section Supervisor. (in his absence, the Right of Way Bureau Chief will sign).

5. If the utility company does not provide sufficient maps, have original map reproduced.

MAKING UP UTILITY AGREEMENT

1. After the estimate has been signed, make up the utility agreement as follows:

   a. Two originals and one copy of the four page agreement. Check to see if project number and designation are listed accurately. Total estimated cost and cost to the State and company are obtained from the company's cost estimate.

   b. Duplicate two copies of the cost estimate and cover letter.

   c. Assemble two agreements, attaching copies of the cost estimate and letter.

2. Send two copies of the agreement to the company for signature. If relocation involves private right of way, request that right of way documents be furnished.

RECEIPT OF SIGNED UTILITY AGREEMENT FROM COMPANY

1. Record receipt on progress form, send updated copy of the progress form to Negotiations.

2. Submit agreement to Audit Unit for their review and approval.

3. When the agreement is returned from the Audit Unit, record the date on progress form.

4. If private right of way is involved, the Right of Way Attorney must give an opinion on the evidence furnished by the company.

   a. Upon receipt of opinion, make out "Certificate-Utility Company Property Interest"; duplicate, attaching one copy to each utility agreement.

5. Stamp last sheet of the agreement with Utility Section approval stamp and date stamp. Submit to Supervisor - Utilities Section for signature.

6. Primary and Interstate agreements are now ready to be sent to the Federal Highway Administration for approval. Agreements on Secondary Highway projects are now ready for signature by the Chief, Right of Way Bureau, then send out the final distribution.

OBTAINING FEDERAL HIGHWAY ADMINISTRATION'S APPROVAL OF UTILITY AGREEMENTS

1. Make two copies of the original agreement. Duplicate all necessary documents to conform to attachments to the original agreements.

2. Stamp original and duplicate original with "STATE COPY". Send both to the Federal Highway Administration along with a photocopy made prior to stamping the originals. Send the photocopy complete with utility maps. The Federal Highway Administration will retain the photocopy returning the original and duplicate original for distribution.

RECEIPT OF APPROVED UTILITY AGREEMENT FROM FEDERAL HIGHWAY ADMINISTRATION

1. Record receipt on progress form, stamp last sheet of agreement next to the "Authorized Signature" with "OK for Signature" stamp and initial.

2. Submit to Chief of Right of Way Bureau for his signature and final execution.

3. On return of the signed agreements, make two copies of the approved submittal letter returned by the FHWA with the agreements. Send one copy to our Plans Section and one copy to the Program Development Division.

4. Make eight copies of the original agreement and attachments. All should conform to the original agreement.

5. Distribute the utility agreement as follows:

   A. Retain original for State files.
   B. Duplicate original and one copy to utility company.
   C. Three duplicate copies to the District Engineer.
   D. One copy to Construction Bureau.
   E. One copy to Audit Unit.

6. Record final distribution on progress form, send copy of updated form to Negotiations.

RESPONSIBILITY AND PROCEDURE FOR PREPARING UTILITY PLANS FOR UTILITIES SECTION BY PRECONSTRUCTION SECTION

1. Utility Involvements

A. Utility Field Notes - It is the responsibility of the Preconstruction Section to obtain from the field the necessary field notes to prepare an accurate summary of the utility conflicts with highway construction. Therefore, the utility field notes for existing utilities should be as complete as possible. The omission of any utility information from the notes will result in the delay of processing future utility agreements and the needless expenditure of highway funds. The receipt of any field notes that are not considered adequate to present a clear, concise and complete picture of the utility situation for a given project should be returned to the appropriate District Engineer for further field investigation and survey work. All power and telephone poles, anchors, etc. must be "called out"; that is, the station they are opposite and the distance right or left of the centerline must be given. The location of all underground utilities, both plan and elevation, must be included in the field notes.

When power or telephone lines cross the highway centerline, the centerline station, number of wires and clearance above the present ground elevation must be given. This same information, with the exception of the clearance above the present ground elevation, must be furnished for all utilities which parallel the intended highway and which will possibly be in conflict with proposed highway construction.

All telephone, power poles, etc. should be labeled as to the company or private individuals owning them. This information is available from the local residents and from personnel of the various utility companies and cooperatives. In many instances, the utility-like facilities such as television cables, private telephone exchanges, and private power facilities will be encountered. Similar information must be provided for these facilities in order to process their adjustment as a right of way item.

When gas, water or sewer lines cross the centerline, the centerline station must be given, together with type of line, size, depth of pipe from natural ground line and the ownership of the line. Similar information must also be furnished for all of the underground facilities such as private water and sewer line service facilities, telephone cables, power cables, television cables, utility conduits, etc. If similar utility facilities belonging to two different companies are close together, each facility should be labeled as to the company owning it.

B. Road Designer Responsibility It is the responsibility of the road designer to see that the Utilities Section is furnished with accurate and complete utility maps. These maps must contain all of the information provided by the utility field notes. Any omissions or misinformation recorded on the utility maps will ultimately result in additional utility field inspections and thus delay in processing the utility agreement and cause needless expenditures of highway funds. The designer will see that the utility maps conform with the latest road plans and any changes in alignment, additions and revisions to the road plans must be reflected therein. All underground utilities are to be shown on cross-sections.

C. Common Means of Processing Utility Conflicts Utility maps are generally prepared by making "brownlines" from the right of way original maps. On these "brownlines", the information contained within the utility field notes is plotted and "called out". Poles, anchors, etc. located within the construction limits are to be circled to indicate to the Utilities Unit that they are in conflict with highway construction and will probably have to be adjusted. All utility facilities may not have been shown on the plan sheets when they are photographed to make right of way linens.

Therefore, a careful check will have to be made to see if additional topog notes have been received.

When the utility "brownlines" have been completed, the necessary prints should be made for the Utilities Section for the utility field inspection. These prints should not be made and forwarded to the Utilities Section until after the final road plan-in-hand inspection has been made and appropriate changes made to the road plans and utility plans. The number of utility prints to be furnished to the Utilities Section will depend on the number of utilities involved. In all cases, one print will be needed for the District Engineers and two complete prints for the entire project will be needed by the Utilities Section.

Prints are also needed for each utility as follows:

Power Company	3 prints
Rural Electric	2 prints
Gas	3 prints
Telephone	2 prints
Rural Telephone	2 prints
Water	2 prints
Sewer	2 prints

In addition to prints of the utility plans, it is necessary to supply the Utilities Section with one complete print each of road plans, cross sections, and typical sections for the entire project. It is imperative that the location of all underground utilities be shown on the cross sections.

The road designer should forward the appropriate copies of utility maps, cross sections and road plans, together with a memorandum of transmittal, to the Right of Way Section Supervisor, attention Utilities Section for their use in making utility agreements.

1. Utility Relocation Contracts The receipt of the utility plans by the Utilities Section will allow them to arrange for a field inspection with representatives of the utility company division and headquarters' Utilities personnel. At the time of this inspection, the method of adjusting the conflicting utility facilities will generally be determined. In some instances, the utility companies will request additional time to investigate the problems in order to advise the highway of the best solution. In any event, the Utilities Section will advise: (1) the Right of Way Section, regarding those facilities which must be handled as right of way items; (2) the Preconstruction Section, regarding those facilities which must be handled as construction items. The usual utility facilities will be handled as utility conflicts in accordance with PPM 30-4 and amendments thereto. As indicated above, copies of the utility agreements, as they are concluded, will be on file in the Utilities Section for reference.

2. Project Contract Basis There will be some utility facilities which will be adjusted as a contract item. These will ordinarily be associated with city or county owned water and sewer line facilities. Such items as fire hydrants, water turnoffs and meters can continue to be adjusted as construction items. Generally the Hydraulics Unit will be advised by the Utilities Section when it is necessary to adjust certain portions of utilities by the contract basis. The limits of these adjustments will be designated so that the Hydraulics designer can develop adequate plans and a cost estimate. One set of plans and an original copy of the cost estimate, as well as a transmittal memo, will be furnished to the Utilities Section by the road designer. The Utilities Section will then incorporate the plans and estimate into a special utility agreement between the utility company and the Department of Highways.

3. Unusual Situations There will, undoubtedly, be instances where there will be doubt as to who should initiate the action for adjustment of utility-like facilities. In these cases, the road designer should arrange to meet with a representative of the Utilities Section so that the division of responsibility can be worked out and provision made to eliminate the conflict. As far as the handling of private water and sewer service line facilities and service connections are concerned, reference is made to Mr. J. R. Beckert's memorandum dated August 1, 1968, to Mr. Ed Miller. This letter is self-explanatory and clearly indicates the procedure which must be followed when adjusting conflicting private service line facilities on public rights of way and the replacement of nonconflicting private service line facilities on public right of way. In both instances, the Preconstruction Section has the responsibility of seeing that program documents and negotiations with private owners are concluded on the above procedures.

UTILITIES AGREEMENT FORM

Form U-1 59
Revised 82

This form is the standard utility agreement and is to be executed by authorized personnel of both parties, indicating that all the provisions contained therein have been complied with.

Form U-1 59
Revised 7/82

STATE OF MONTANA
DEPARTMENT OF HIGHWAYS
UTILITIES AGREEMENT

FEDERAL-AID PROJECT _____

An agreement between _____ and the Montana Department of Highways for changing and/or relocating utility facilities as required by the construction of a Federal-aid Road Project.

The _____ hereinafter referred to as the "Utility" and the MONTANA DEPARTMENT OF HIGHWAYS, hereinafter referred to as the "Department", hereby agree as follows:

1. That the Department plans to construct a highway project known as _____ in _____ County and designated as Federal-aid Project _____, with State and Federal-Aid highway funds.

2. That, due to the construction of this project, certain adjustments of the existing plant of the utility will have to be made where said plant now occupies the existing and/or proposed highway right-of-way. Federal Highway Administration's Policy and Procedure Memorandum 30-4, 30-4.1, and subsequent amendments, and the laws of the State of Montana prescribe the requirements governing the adjustments under this agreement.

3. That utility waives the hearing contemplated by Section 60-4-402, MCA.

4. The total estimated cost at this time is $_____. Proportionate participation is: STATE $_____ and UTILITY $_____. A copy of a cost estimate and plans indicating plant adjustments are hereby attached as "Exhibit A" and made a part of this agreement by this reference. The State's obligation under this agreement shall be in accordance with all applicable State and Federal laws in existence on the date of execution of this agreement. Should all, or any portion, of said laws be repealed or declared unconstitutional by a Court of competent jurisdiction, payment shall be made in accordance therewith.

5. That Utility will make any necessary adjustments in its plant as required by the proposed construction with its own forces, continuing contractor, or by competitive bidding all in accordance with the terms of current agreements.

6. That prior to Department authorization to proceed with the actual utility relocation, the utility will indicate in

writing to the District Engineer whether company forces, or a contractor will be used to complete the required work, and provide any changes in estimated costs due to changes since date of agreement.

7. That contractor use by a utility must be supported by being awarded in accordance with practices followed by the utility in the accomplishment of the utilities non-highway related work.

8. That the Department will either reimburse the Utility for actual costs involved, or if the Agreement is concluded on a lump sum basis, the reimbursement will be paid in a lump sum amount, conforming with the requirements of Policy and Procedure Memorandum 30-4 and amendments thereto, as issued by the Federal Highway Administration. The billings are to be submitted in accordance with the provisions of Section 7, paragraph (g) of said Memorandum.

9. That this agreement ___(is) (is not)_____ concluded on a lump sum basis in accordance with the provisions of Section 7, paragraph (g) of Policy and Procedure Memorandum 30-4.

10. The Department reserves the right to terminate this agreement upon fifteen (15) days written notice to the utility. If the Department does terminate this agreement, it shall reimburse utility the Department's share of all eligible costs the utility has incurred under this agreement to the date specified in the termination notice.

11. That all cost records of the Utility pertaining to this project will be subject to inspection at any time by representatives of the Department and the Federal Highway Administration. All such records shall be retained for a period of not less than three years from the date of final payment.

12. FEDERAL REGULATIONS provide that before participating reimbursement may be made to a state for the cost of work performed by a utility, the cost records and accounts of the utility may be audited by a representative of the Federal Highway Administration and/or the Department for the determination of actual, reimbursable costs to the State. It is the duty and a requirement of the utility to prepare and retain a complete cost record covering the entire cost of adjusting their plant. This record is to be kept by the utility for auditing purposes and final payment to the utility will be based on the approved audit.

13. To avoid delay in paying utility invoices and to expedite audit by Federal and State auditors, the following must be complied with:

(a) No actual work is to be performed under this agreement until written authority to proceed is received from the respective District Engineer.

(b) Accurate accounts of all salaries, material and equipment rental charges for the work performed, shall be kept at all times.

(c) When equipment is used on the work, reimbursement shall be in accordance with paragraphs 12a, 12b, 12c, 12d and 12e of Policy and Procedure Memorandum 30-4.

(d) All invoices from various suppliers covering materials used on the work should be kept for audit purposes in order to check bills rendered the State. When permanent stock record cards are kept on materials, these shall be adequate.

(e) New materials replacing existing materials will require an explanation for the necessity of new material replacement. Where credit for materials removed is not allowed, an explanation will be required.

(f) If practical, bills covering the actual cost of moving the plant are to be submitted to the State within 120 days after all work has been completed.

14. Utilities retained or relocated within the Highway right of way shall comply with the Department Regulations Governing Occupancy of Highway Right of Way.

15. Work done on Highway right of way with respect to the location of the facilities and in the manner which the facilities are installed or attached within the right of way must be approved by the District Engineer to insure that installation of the facilities will meet the "Standard Specifications for Road and Bridge Construction" as adopted by the Department.

16. The utility, for itself, its assignees and successors, hereby covenants and agrees that it is fully aware and apprised of Title VI of the Civil Rights Act of 1964, 78 Stat. 252, 42 U.S.C. 2000d to 2000d-4 and Title 15, Code of Federal Regulations, Part 8, issued in implementation to said Act. The utility further covenants and agrees that it will fully comply with the said Act and the Regulations of the Department of Transportation issued thereunder, which Act and Regulations are herein incorporated by this reference and made a part hereof. The "Affidavit of Compliance" as previously executed by the Montana Department of Highways and said utility is on file, and by this reference made part of this agreement.

17. Addendum "A" ___(is) (is not)_____ attached and by this reference made a part of this agreement.

18. Due to the type of construction provided for in this agreement, it is mutually agreed between the Utility Company and the State that no expired service lift credit is due as provided for in Paragraph 9, P.P.M., 30-4.

IN WITNESS WHEREOF, the parties hereto have affixed their respective corporate names and seals through their duly authorized officer, this ____ day of _____, A.D., 19___.

_____

BY_____

STATE OF MONTANA
DEPARTMENT OF HIGHWAYS

BY_____
Authorized Signature

RW 144
Revised 11/25/80

STATEMENT
OF
UTILITY PROPERTY INTEREST

of _____
(Utility Name)

Highway Project No._____ Highway Project Name_____

Highway Station_____ To Highway Station_____

1. Utility Description of Line Segment:_____

_____

_____

2. The Utility claims to have acquired a property interest in the land occupied by its above-designated facility, the "damaging" or taking of which is compensable in eminent domain because of the following facts:

A. Written instrument

1. Recorded
   Vol:_____Book:_____Page:_____County_____
   Unrecorded
   If copy not attached, please explain_____

   _____

   _____

B. No written instrument

1. Date of original occupancy_____
   Has this occupancy been continuous? Yes____No____

C. Are said facilities visible? Yes____No____

D. Any other facts:

_____

_____

_____

To the best of my knowledge, the above information is accurate as of _____
(date)

THE _____
Utility Company or Co-op

BY _____

_____
Title

_____ _____

(Project Number) (Date)

A G R E E M E N T

Due to the type of construction provided for in this agreement, it is mutually agreed between the Utility Company and the State that no expired service life credit is due as provided for in paragraph 9, PPM 30-4.

ATTEST:

_____ BY _____

STATE OF MONTANA
DEPARTMENT OF HIGHWAYS

BY _____
Supervisor-Utilities Section

CERTIFICATE - UTILITY COMPANY PROPERTY INTEREST

Project Number

Project Name

Name of Utility

Name or Description of Facilities

In accordance with the requirements of Section 71, (1) & (2) of PPM 30-4, dated February 14, 1969, I hereby certify that:

From the facts supplied to the State of Montana Department of Highways by the said Utility, named above, including statements, affidavits representations by its agents, other written proof and from the opinions of the State's Attorneys, based upon all of the evidence concerning the Utility's facilities in question which is on file with this Department, it is my determination that the said Utility's facilities here in question have a non-possessory property interest which is compensable in eminent domain under Montana law.

_____ _____

Title: Date

RWU 11
(Rev. 10/75)

INTER-DEPARTMENTAL MEMORANDUM

DEPARTMENT OF HIGHWAYS

To _____ Date _____

From _____ Subject _____

_____

We have estimated that the following amount will be required for the cost of incidental construction on the above project:

POWER _____

POWER _____

TELEPHONE _____

TELEPHONE _____

GAS _____

OIL _____

WATER _____

SEWER _____

RAILROADS _____

STREET LIGHTS _____

INCIDENTALS FOR AGREEMENT _____

MISCELLANEOUS _____

TOTAL AMOUNT REQUESTED: $ _____

(Check one below)

☐ There are no utility relocations on this project subject to The Utility Siting Act.

☐ There are utility relocations on this project which are subject to The Utility Siting Act as follows:

_____

_____

ENGINEERING ESTIMATE - EXAMPLE ONLY

1. Review Conference with _____ and MDOH representatives. Prepare and submit cost estimate and related data.

Designer - estimated 24 hours at $9.00	$ 216.00
Office Engineer - estimated 6 hours at $10.75	64.50
Transportation - estimated	15.00
SUBTOTAL	$ 295.50

2. Preparation of Plans, Specifications and Bidding Documents for obtaining bids for contractors, obtaining approval of these documents from _____, Montana, State of Montana Department of Highways and Federal Highway Administration.

Office Engineer - estimated 2 hours at $10.75	21.50
Designer - estimated 24 hours at $9.00	216.00
Draftsman - estimated 24 hours at $7.50	180.00
Typing, etc. - estimated 12 hours at $6.50	78.00
Transportation - estimated	15.00
Reproduction Costs - estimated	20.00
SUBTOTAL	$ 530.50

3. Review work in field with interested contractors

Project Engineer - estimate 6 hours at $9.00	54.00
Transportation - estimated	15.00
SUBTOTAL	$ 69.00

4. Receipt of bids and submission of cost data to State of Montana Department of Highways and Federal Highway Administration.

Office Engineer - estimated 16 hours at $10.75	172.00
Typing, etc. - estimated 8 hours at $6.50	52.00
SUBTOTAL	$ 224.00

5. Preparation of contract documents

Office Engineer - estimated 6 hours at $10.75	64.50
Typing, etc. - estimated 6 hours at $6.50	39.00
SUBTOTAL	$ 103.50

6. Construction Supervision and Staking

Staking Crew - Estimated (3 men) 6 hours at $22.50	$ 135.00
Project Engineer - Estimated 60 hours at $9.00	540.00
Transportation - estimated	145.00
SUBTOTAL	$ 820.00

7. Compaction Tests on Backfill

Laboratory test for standard proctor - estimated	25.00
Field compaction test - estimated 18 at $15.00	270.00
Transportation - estimated	35.00
SUBTOTAL	$ 330.00

8. Preparation to final estimates including construction and engineering costs to submit to the Federal Highway Administration and the State of Montana Department of Highways.

Office Engineer - estimated 12 hours at $10.75	129.00
Typing - estimated 8 hours at $6.50	52.00
SUBTOTAL	$ 181.00
TOTAL	$2,553.50

SAMPLE OUTLINE FOR ESTIMATING AND BILLS
STATE OF MONTANA DEPARTMENT OF HIGHWAYS

NOTE: This sample has been prepared in accordance with P.P.M. 30-4 of the Federal Highway Administration and is only intended to show the approved make-up and form for the estimate and the billing which is to be presented when utilities are moved because of highway construction. The labor classification, materials, etc., are shown only to illustrate an example, and are not to be construed as approved or complete.

Reference to P.P.M. 30-4

(COMPANY NAME)
(Address)

To: Montana Department of Highways (submit through highway office which gave authority for work).

14-b. Cost of rearranging power (or telephone) facilities because of construction of Highway Project _____, the _____ Road in _____ County.

14-b. Work started (show on bill only the date of first claimed cost).

14-b. Work completed (show on bill only the date of last claimed cost).

14-b., 14-c. Records available for audit at (location of cost records for bill only).

8-b., 14-b. Costs recorded under Work Order No. (show on bill only the Company Work Order No.).

10-a. Labor Costs

	Classification	Hours	Rate	Amount
	Engineer (Staking line)	x	x.xx	xx.xx
	Laborer (Staking line)	x	x.xx	xx.xx
	Working Foreman	x	x.xx	xx.xx
	Linemen	x	x.xx	xx.xx
	Linemen	x	x.xx	xx.xx
	Groundmen	x	x.xx	xx.xx
2-m	Laborers (on job site)	x	x.xx	xx.xx
	Laborer (restoring salvaged material)	x	x.xx	xx.xx
	Clerk	x	x.xx	xx.xx
	Steno	x	x.xx	xx.xx
	Sub-total Direct Labor Charges			xxx.xx

10-b. Payroll Overhead - Company Paid Benefits: x.xx%

Vacation and Sick Leave	x.xx%	
Company Paid Health and Accident Insurance	x.xx%	
Company Sponsored Retirement Plan	x.xx%	
Workman's Compensation	x.xx%	xx.xx%
Social Security & Unemployment Taxes:		
F.I.C.A.	x.xx%	
Federal Unemployment	x.xx%	
State Unemployment	x.xx%	xx.xx%
		xx.xx%

Payroll Additives: xx.xx% of xxx.xx xxx.xx

2-n Overhead allowance to cover applicable indirect costs: xxx.xx

x.xx% of Total Payroll costs (xxx.xx)

Note: 1

11-a. Materials Issued

Quantity	Description	Unit Price	Amount
x	35-6 Poles	xx.xx	xx.xx
x	Crossarms, 8'-6 Pin	x.xx	xx.xx
x	Anchor w/rod	x.xx	xx.xx
x	Bolts, Crossarm, 12"	xx.xx	xx.xx
xxx	3/8" Guy Wire	.xx	xx.xx
xxx	#6 H.D. Copper Wire	.xx	xx.xx
			xxx.xx

11-i. Handling costs on material issued: x% on xxx.xx xx.xx

11-b. Materials Recovered

x	35-6 Poles	xx.xx	xx.xx(Cr.)
x	35-6 Poles	x.xx	xx.xx(Cr.)
x	Crossarms 8'-6 Pin	x.xx	xx.xx(Cr.)
xxx	#6 H.D. Copper Wire	.xx	xx.xx(Cr.)
			xxx.xx(Cr.)

Net Cost for Materials

12. Equipment Costs

Unit No.	Type	Miles or Hours	Rate	Amount
14	Chev. 1/2 Ton Pickup	xx	.xxx	xx.xx
25	Ford Line Truck	xx	.xx	xx.xx
	Sub-Total Equipment Costs			xx.xx

Total Cost of Relocation because of Highway Construction xxx.xx

Note: Of the seven poles relocated, four were on company secured right of way and three were originally on public right of way. The total cost should then be split as follows:

4/7 x xxx.xx - xxx.xx for cost of relocation of poles originally on private right of way.
3/7 x xxx.xx - xxx.xx for cost of relocation of poles originally on public right of way.

Allocation of Costs:

State:	100% of xxx.xx	xxx.xx
	75% of xxx.xx	xxx.xx
		xxx.xx
Company:	25% of xxx.xx	xxx.xx
		xxx.xx

SAMPLE ONLY

PAYMENT FOR RELOCATION OF UTILITY FACILITIES

General Rules

Utility facilities which occupy a publicly owned right of way and must be relocated as a result of highway construction will be paid for as follows:

75% of the cost, highway funds — 25% of the cost, owner of utility

1 - "Utility" as used in this area includes only utilities which are occupying a public right of way, located thereon as a result of an old 1893 statute which allows certain utility facilities to occupy public rights of way. The term "Utility" has previously been interpreted not to include television cable lines, pipelines, or telephone booths, etc.

2 - In some cases, utilities or private pipelines may occupy highway right of way on the basis of a prior property right which has never been cleared. In this case, such lines must be relocated at 100% highway cost because they are on the ground as a matter of basic property right.

3 - In some cases, pipelines, private water lines, and other utilities or pseudo-utilities occupy public right of way on the basis of revocable permit or without any right to be there whatever. No payment for relocation of these facilities is required. They are notified that their right to occupy the right of way is terminated and ordinarily given the option of relocating in a manner acceptable to the highway agency and at their sole cost, or removing their facilities completely from our property.

4 - Utilities such as sewer or water service which cities or other governmental units provide for the residents of a given area, normally for a charge, are legally located the same as private utilities within the meaning of the relocation statute and the 25% contribution toward the relocation cost is required by law from such local governmental bodies in the same way it is required from a private utility.

5 - Utilities or other facilities which occupy private right of way or right of way other than public street or highway rights of way are handled on a basis of the existence or lack of valid property right. The relocation statute does not apply to these properties.

Listed above are a few general rules and a few exceptions in the area of payment for utility relocations. There are a number of relatively fine legal distinctions involved in this area. Please refer any questions or doubtful cases involving utility relocations and compensations therefore to the Right of Way Bureau, Helena.

February 26, 1968

Locked Gates for
Utility Access
From Interstate
Ref: 60-REC

Montana Utility Companies

Gentlemen:

Some misunderstanding seems to exist regarding provision for utility access by means of locked gates along the controlled access Interstate System in Montana. Present regulations do allow for the provision of such access where it can be shown that it is the only reasonable means of maintaining the utility facilities in question. It is our hope that by communicating more information on this subject, we can work together more effectively so that the ultimate product in terms of both highway and utility facilities can be used and operated safely, efficiently, and in conformance with the requirements which govern access from the Interstate main line.

At the time utility relocation is being considered in connection with an Interstate project, consideration should be given to availability of access for maintenance of utility facilities. In most cases, the facilities are accessible from other public roads or the terrain is not rough enough to prevent vehicles from being driven to the line. In a few cases, especially in the mountainous area of western Montana, extremely rough terrain and lack of a usable local road network creates situations where utility facilities cannot reasonably be maintained without access being provided from the Interstate main line. The locked gate for utility access was intended to meet this kind of need.

The Montana Highway Commission is willing to provide these locked gate accesses where it can be demonstrated that there is no other reasonable means of access to the utility facilities. In order to provide these accesses, the need for them should be recognized and they should be requested sufficiently in advance of our contracting the highway project for us to put them on our plans and obtain approval of them. Since Washington, D.C. level approval is required for any change in the access control of a Federal-aid Interstate Project after the project has been let to contract, it is most desirable that these needs be recognized and included in our planning. Post contract approval of these facilities requires a great deal of time and explanation, and is quite difficult to obtain. Our Right of Way Procedure Memorandum on this subject dated September 1, 1967, was intended to instruct our field personnel as to what would be required to make application to the Bureau of Public Roads for approval of locked gate utility access after the project had gone to contract. Although some of the requirement involved are the same, it was not intended that this procedure memorandum apply to the normal case where a utility company requests locked gate access prior to contract.

Another thing which we must have in order to properly support our request for the locked gate access is documentation which demonstrates that no other feasible means of access to the utility facilities is available and that the

locked gate access requested is the only feasible solution to the access problem. We have found that a statement to this effect is ordinarily not sufficient. The presentation to support a locked gate access must, as a minimum, include a sufficient explanation of the topography, lack of other public road access, natural barriers, and other factors which demonstrate that the locked gate access requested is the only reasonable way of obtaining access to the facilities. As is true with any other presentation designed to convince a third party who may not be familiar with the area or factors being described, maps, sketches, and photographs can help greatly in conveying what we are trying to communicate. The approximate frequency of expected use, and the type vehicles expected to utilize the access point are other factors which should be covered.

To discourage improper public use of these points, a regular highway approach is not built. The location is selected where a shallow ditch or daylight section enables easy vehicular access from the roadway shoulder to the locked gate. Where a utility company requests a locked gate, the sketch they submit should show the approximate highway station, or the limits of the area where the access point will be of greatest benefit to the utility company.

Our utility personnel will cooperate with you by providing information regarding highway access planning, and are available to give their assistance or suggestions in connection with preparation of the information outlined above.

Sincerely yours,

LEWIS M. CHITTIM, P.E.
State Highway Engineer

By_____
JACK R. RICKER
Chief Right of Way Agent

LOCKED GATE REQUEST
FOR UTILITY ACCESS FROM INTERSTATE

Date _____
Project No. _____
Ref: 65-RCH

Mr. Jack R. Ricker
Right of Way Section Supervisor
Department of Highways
Helena, Montana 59620

Dear Mr. Ricker:

Please consider this form, as checked below, a formal request for a locked gate access for our facility on a proposed Interstate Highway.

1. Description of Utility to be services by locked gate: _____
   _____
2. Largest type of service vehicle used: _____
3. Number of times per year gate to be used: _____
4. Stationing and location of proposed gate: _____
5. Is proposed gate "at-grade"? Yes_____ No_____
6. Could facility be moved to eliminate the need for a locked gate? Yes_____ No_____
7. If yes, at what cost? _____
8. How far away is nearest service or frontage road? _____ (miles)
9. Are further details listed on a sheet other than this form? Yes_____ No_____
10. If yes, see attached details.

UTILITY COMPANY _____

By _____
(Title)

****

FOR STATE HIGHWAY USE ONLY:

What are the physical barriers against building an access service trail in all directions from the utility area? List cost of access roads from nearest point.

AHEAD: _____ $ _____

BACK: _____ $ _____

LEFT: _____ $ _____

RIGHT: _____ $ _____

Included are: Utility Plans _____ Road Plans _____ Cross Sections _____ Aerial Photo ___
Translite _____ Sketch _____ Company Map _____ Other _____

RW 133

C O M M O N U S E A G R E E M E N T

(To be Completed by Mont. Dept. of Hwys.)

Highway Project No._____
Designation_____
Highway Mtce. Sec. No._____

County_____
Sec._____, Twp._____, Rge._____
Federal-aid Rte. No._____

THIS AGREEMENT, made and entered into this _____ day of _____ 19___, by and between _____ hereinafter called COMPANY and the STATE OF MONTANA, acting by and through its DEPARTMENT OF HIGHWAYS, hereinafter called STATE.

WITNESSETH

WHEREAS, COMPANY is the owner of certain easements or in possession of certain right of way, hereinafter referred to as COMPANY'S EASEMENT, and described as follows:

and

WHEREAS, STATE has acquired certain real property in fee simple for highway purposes in the vicinity of _____, County of _____, on _____ Highway Project Number _____, between approximate Highway Stations numbered _____ and _____ hereinafter referred to as HIGHWAY RIGHT OF WAY, and

WHEREAS, HIGHWAY RIGHT OF WAY occupies and bounds a portion of COMPANY'S EASEMENT and is therefore subject to that portion of said EASEMENT which is hereinafter referred to as AREA OF COMMON USE and particularly described as follows:

WHEREAS, STATE and COMPANY agree that it is in the mutual interest of both parties hereto to identify the mutual respective rights and obligations of the parties in order to avoid conflict in the future exercise thereof.

NOW, THEREFORE, in consideration of the mutual covenants herein contained, STATE and COMPANY hereby agree as follows:

1. COMPANY hereby consents to the construction, reconstruction, maintenance and use by STATE of the above referred to Highway Project, over, along and upon COMPANY'S EASEMENT in the AREA OF COMMON USE subject to the terms and conditions herein contained.

2. STATE acknowledges COMPANY'S title to COMPANY'S EASEMENT in said AREA OF COMMON USE and the priority of COMPANY'S title over the title of STATE therein. COMPANY reserves the right and shall continue to have an easement to use said AREA OF COMMON USE in common with public use of said highway for all of the purposes for which COMPANY'S EASEMENT was acquired, without any further agreement or permission from STATE.

3. In the event of major repair, reconstruction or removal of any of COMPANY'S facilities located within the right of way of said Highway Project whereby COMPANY deems it necessary to enter upon the portions of the right of way of the said Highway, COMPANY shall, except in case of emergency, give advance notice to the STATE'S Division Construction Section where performance of such work may endanger or significantly interfere with highway traffic. In all cases, COMPANY shall make adequate provision for the protection of the travelling public.

4. This policy applies to all portions of said Highway Project, except controlled access portions of the Interstate System. Construction work within controlled access limits is allowed within access control limits only with prior written permission.

5. In the event that the future use of said highway shall at any time or times necessitate a relocation, reconstruction or removal of any of COMPANY'S facilities located in said AREA OF COMMON USE, STATE shall notify COMPANY in writing of such necessity and agree to reimburse COMPANY on demand for its costs incurred in complying with such notice. COMPANY will provide STATE with plans of its proposed relocation and an estimate of the cost thereof; and, upon approval thereof by STATE, COMPANY will promptly proceed to effect such relocation, reconstruction or removal.

6. In the event any of COMPANY'S facilities will be located outside of said AREA OF COMMON USE, STATE shall: (1) enter into the standard form of common use agreement covering the new location of COMPANY'S EASEMENT within the highway right of way (2) provide a good and sufficient easement for COMPANY within the highway right of way or across STATE owned property if necessary to replace COMPANY'S EASEMENT or any part thereof, or (3) reimburse COMPANY for all costs incurred to acquire the necessary easement for new right of way for its facilities.

7. Except as expressly set forth herein, this agreement shall not in any way alter, modify or terminate any provision of COMPANY'S EASEMENT. STATE and COMPANY shall mutually occupy and use said ARE OF COMMON USE in such a manner as not to interfere unreasonably with the rights of the other party. Nothing herein contained shall be construed as a release or waiver of any claim for compensation or damages which COMPANY and STATE may now have or may hereafter acquire due to the construction of additional facilities or the alteration of existing facilities by either STATE of COMPANY in such manner as to cause an unreasonable interference with the use of said AREA OF COMMON USE by the other party.

8. This AGREEMENT shall inure to the benefit of and be binding upon the successors and assigns of both parties.

IN WITNESS WHEREOF, the parties hereto have caused this agreement to be executed, in duplicate, by their respective officials thereto duly authorized.

STATE OF MONTANA
DEPARTMENT OF HIGHWAYS

By_____

_____
Title

_____
Utility, Cooperative or Common Carrier

By_____
Title

STATE OF MONTANA)
) ss.
County of Lewis & Clark)

On this day _____ of _____, 19____, before the undersigned Notary Public for the State of Montana, personally appeared_____ _____ for the State of Montana Department of Highways and acknowledged to me that he executed the same.

In witness whereof, I have hereunto set my hand and affixed my notarial seal the day and year in this certificate first above written.

_____
Notary Public for the State of Montana
Residing at_____
My Commission Expires_____

STATE OF MONTANA)
) ss.
COUNTY OF)

On this day _____ of _____, 19____, before the undersigned Notary Public for the State of Montana, personally appeared_____ _____ for the corporation which executed the foregoing instrument, and acknowledged to me that such corporation executed the same.

In witness whereof, I have hereunto set my hand and affixed my notarial seal the day and year in this certificate first above written.

_____
Notary Public for the State of Montana
Residing at_____
My Commission Expires_____

RW 131

NOTICE OF UTILITY OCCUPANCY AND USE OF STATE HIGHWAY SYSTEM RIGHT OF WAY

TO: DIVISION CONSTRUCTION SECTION SUPERVISOR
Montana Department of Highways
_____, Montana

Highway Project No._____
Highway Designation_____
Highway Station_____to_____

_____ proposes to occupy and use State
(Name of Utility, Cooperative or Common Carrier)
Highway System right of way in accordance with the provisions of Section IV of the Montana Department of Highway's "Regulations Governing Occupancy of State Highway System Right of way by Utility Facilities", as follows:

Description of Facility:
a. Telephone_____
b. Electric_____
1. Overhead_____; 2. Underground_____
c. Natural Gas_____
d. Water_____
e. Sewer_____
f. Other (specify)_____

Utility Facility Location: (to be supplied by utility)
Section_____, Township_____, Range_____, County_____
Highway Name or Route No._____
Mile Post_____to Mile Post_____. (Where available)

Drawings:
Utility construction drawings attached hereto and incorporated herein by this reference:
Prints No._____Dated_____
Prints No._____Dated_____
Date Submitted_____; _____
Name of Utility, Co-op or Common Carrier
By_____; Title_____

.....

Preliminary agreement to the location of utility facility given:

1. By visit on_____(date) by_____(Name)
2. By telephone call on_____(date) by_____(Name)
3. After field inspection on_____(date) by_____(Name)

TO:_____(Name and/or Title)
_____(Name of Utility, Co-op, or Common Carrier)
_____(Mailing Address)

1. Occupancy and use of State Highway System right of way as described herein is approved.

Date_____; By_____
Division Construction Section Supervisor,
State of Montana Department of Highways

2. Occupany and use of State Highway System right of way as described herein is not approved for the reasons listed on the reverse side hereof.

Date_____; By_____
Division Construction Section Supervisor
State of Montana Department of Highways

UTILITY AGREEMENT COVER SHEET

Keep With Agreement At All Times

Project No.: P.E. R/W IC _____ Ready Date _____

Desg.: _____ County _____

Utility: _____ Agreements

Type: _____ _____ of _____

IC Funds: Programmed $_____

Obligated $_____

Estimate Total $_____

State Pay $_____

Company Pay $_____

Field Review Date: _____ Specials: Yes ___ No ___

Consultant: Yes ___ No ___ Approved: _____

Contractor: Yes ___ No ___ Approved: _____

Estimate & Plans Received: _____

R/W Documentation: Yes ___ No ___ Betterment: Yes ___ No ___

Requested _____ R.R. Involvement Yes ___ No ___

Forms Attached: _____Addendum "A" (Buried Only)

_____R/W 151-A (Property Interest)

_____RWU-1 59A (No Expired Service Life)

City - County: _____Title VI Compliance

_____Partic. Splits in Plans

DATE OUT	DEPARTMENT OF HIGHWAYS ROUTING	DATE RETURNED
_____	1. Supervisor-Utilities Section (Estimate OK)	_____
_____	2. To Utility Company for Signature (Agreement)	_____
_____	3. Audit Unit (Agreement Review)	_____
_____	4. R/W Attorney (If Utility Property Interest)	_____
_____	5. Supervisor-Utilities Section (Agrmt. Approval)	_____
_____	6. FHWA (Not if Secondary Project)	_____
_____	7. Chief-R/W Bureau (Final Execution)	_____
	8. Notify Plans Section & Project Control	_____
	9. Final Distribution	_____

NOTE: BEFORE DISTRIBUTION, DATE ORIGINALS (2 COPIES)

Notify:

Negotiations: PIH_____ Est Rec._____ Signed Agrmt. Ret._____ Final Dist._____

Form RWU 3
(Rev. 1/78)

UTILITY STATUS

Date _____
Project _____
_____

To: Supervisor - Utilities Section

From: Supervisor - Division Construction Section - _____

Utility or Railroad Co.	Relocation Work Authorized Date	Relocation Work Started Date	Estimated Completion Date	Relocation Work Completed Date
1.				
2.				
3.				
4.				
5.				
6.				

Remarks: _____

_____

_____

If it is necessary for utility or railroad relocation work to be coordinated with that of the highway contractor, list below: 1) Utility or railroad involved, 2) The location of the work, 3) Reason for coordination, 4) How the work is to be coordinated, 5) Estimated time conflict will exist after highway construction starts, 6) Other information that is appropriate.

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Supervisor - Division Construction Section

This form to be submitted for each project that is included on the PC-177 forms received from Project Control which cover a 12 month period. The form is to be in the Utilities Section by the first working day of each new month.

UTILITY AGENT DUTIES & RESPONSIBILITIES

Generally, the duties and responsibilities of the District utility agent will be to act as a representative in the field for the Montana Department of Highways making inspections, reports, audits and coordinating various phases of working where required in order to help implement and carry out right of way encroachment and utility relocation policies. More specifically, the District utility agent will be required to:

1. Investigate reports of utility company activities on Highway System R/W within his district to enable him to determine that such activities are being conducted in accordance with Montana Department of Highways' Regulations.

2. Assist the District Engineer and District Maintenance Chief in processing Common Use Agreements, Joint Occupancy Agreements or Encroachment Permits in accordance with Occupancy Regulations.

3. Expedite processing of estimates for utility relocation work when cost thereof is participated in by the Department of Highways.

4. Assist the Utilities Section, where requested, to help in completion of utility agreement between the Utility and the Highway Department.

5. Coordinate requests for right of way and centerline staking from the utility companies with the District Construction Supervisor.

6. Supervise inspection of utility activities on Highway System right of way as required to assure compliance with the Department of Highways' Regulations and Utility Agreements.

7. Inspect and accept salvaged materials.

Whenever the operations of utility companies and cooperatives necessitate written correspondence with the district personnel, the correspondence be directed to the appropriate district engineer, attention district utility agent. By addressing the correspondence in this manner, the district utility agent will receive the information and thus be able to expedite the request of the utility company. In instances where it is necessary to have verbal conversation regarding the above utility matters, contact should be made directly with the district utility agent.

UTILITY POLICY AND PROCEDURE MANUAL

CONTENTS PART V

5. Montana Law and Legal Opinions

MCA 60-4-401 63

MCA 60-4-402 63

MCA 60-4-403 63

MCA 69-4-101 64

MCA 60-4-401. RELOCATION - DEFINITIONS. For the purpose of the sections relating to relocation of utility facilities, terms are defined as follows: (1) Utility - includes publicly, privately and co-operatively owned utilities.

(2) Cost of relocation - includes the entire amount paid by the utility properly attributable to the relocation after deducting any increase in the value of the new facility and any salvage value derived from the old facility.

(3) Federal-aid systems - includes the Federal-aid primary system, the Federal-aid secondary system, the Federal-aid interstate system, and urban extensions of all of them.

(4) Interstate system - includes any highway now included or which shall hereafter be included as a part of the National System of Interstate and Defense Highways, provided for in the Federal-Aid Highway Act of 1956 and supplements or amendments.

MCA 60-4-402. RELOCATION OF UTILITY FACILITIES - HEARINGS - ORDER. (1) After appropriate hearings, the Commission may make and publish reasonable regulations for the installation, construction, maintenance, repair, renewal, or relocation of tracks, pipes, mains, conduits, cables, wires, towers, poles, and other equipment and appliances (hereinafter called "facilities") of any utility in, on, along, over, across, through or under any project on any of the Federal-aid systems.

(2) The Commission shall give written notice of the place and time of a public hearing to determine the necessity of any relocation of facilities to all concerned not less than twenty days before the hearing. Hearing may be waived in writing by utility concerned or other interested parties.

(3) After the hearing, the Commission may determine that any such facilities must be relocated. If so, the utility owning or operating the facilities shall relocate them in accordance with the valid order of the Commission. The utility and its successors and assigns may maintain and operate the relocated facilities, with the necessary appurtenances, in the new location.

MCA 60-4-403. RELOCATION COSTS. Seventy-five percent (75%) of all cost of relocation, including the costs of acquisition of new right of way, of dismantling, and of removal, shall be paid by the Commission as a cost of highway construction.

TELEGRAPH, TELEPHONE AND ELECTRIC LIGHT

AND POWER LINES

MCA 69-4-101. RIGHTS OF WAY FOR POLE LINES ALONG STREETS, ROADS AND HIGHWAYS. A telegraph, telephone, electric light, or electric power line, corporation, or public body, or any other person owning or operating such, is hereby authorized to install its respective plants and appliances necessary for service, and to supply and distribute electricity for lighting, heating, power, and other purposes, and to that end to construct such telegraph, telephone, electric light or electric power line or power lines, from point to point, along and upon any of the public roads, streets, and highways in the State of Montana, by the erection of necessary fixtures, including posts, piers, and abutments necessary for the wires. But the same shall be so constructed as not to incommode or endanger the public in the use of said roads, streets, or highways and nothing herein shall be so construed as to restrict the powers of city or town councils.

E. O. PARSONS, Utilities Engineer

November 10, 1958

WALTER MURFITT, Highway Attorney

U-P-TV Cable
Encroachment

This is to advise you that the TV cable is not a utility under the definition of the Statutes of Montana. There is no right in the company to use our right of way. There is no obligation to pay the cost of moving the cables.

Notify the company in writing to remove the TV cable from the right of way as an encroachment.

Sincerely yours,

WALTER MURFITT,
Highway Attorney

JLK:mb:221/J